**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION NO. 4776 OF 1999**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**

**HONOURABLE MR.JUSTICE SHARAD D.DAVE**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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**HITESHKUMAR S. MAKWANA S/O MR. S.M.CHAMAR – Petitioner(s)**
**Versus**
**SECRETARY, MINISTRY OF PERSONNEL, GRIEVANCES & PENSIONS & ORS. - Respondent(s)**

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**Appearance :**
MR. BHASKAR TANNA, SR. ADVOCATE, with
MS. MAHROOK N. KERRAVALA for M/S.TANNA ASSOCIATES for Petitioner(s).
MR. BIPIN BHATT for Respondent(s) : 1,
MS. P.B. SHETH, AGP for Respondent(s) : 2 - 3.
DELETED for Respondent(s) : 4.

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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**
**and**
**HONOURABLE MR.JUSTICE SHARAD D.DAVE**

**Date : 29/03/2006**

**ORAL JUDGMENT**
**(Per : HONOURABLE MR.JUSTICE R.S.GARG)**

1. Heard the learned Counsel for the parties.

2. Mr.Tanna, learned Senior Counsel for the petitioner, submits that the judgement of the Central Administrative

Tribunal dated 22nd April, 1999 passed in Original Application No.398 of 1996, heavily relies upon the note prepared by the Secretary and the Tribunal had given extra weightage to the said notice. He submits that the document, sought to be used against the petitioner's interest, was not supplied to him and a privilege was claimed. According to him, this Court in Special Civil Application No.9783 of 1998, rejected the objections of the present respondents regarding privilege and directed them to produce a copy of the same. He submits that the petitioner be allowed to challenge the correctness, validity and propriety of the said note or in the alternative, the matter be remitted back to the Tribunal, with an opportunity to challenge the correctness and/or otherwise of the said note.

3. Mr.Bipin Bhatt, learned Counsel for respondent No.1, however, submits that the learned Tribunal was absolutely justified in relying upon the said note and the respondents were also justified in claiming privilege against filing of the said note before the Tribunal. He, however, submits that in accordance with the directions of this Court, a copy of the said note has already been filed in these proceedings and has also been supplied to the present petitioner.

4. After hearing the parties and on going through the said note, we are of the considered opinion that this Court is not required to enter into the controversial issue that whether the note is right or not, whether it is valid or not and whether it duly observes the roster system. All these

questions, in our opinion, were required to be raised before the Tribunal. It is trite law that if a document is sought to be relied upon by a particular party, then, the said document cannot be kept at the back of the sleeve and be used as a sword as surprise. In the present matter, from the order passed by the learned tribunal, it would clearly appear that it has heavily relied upon the said note. Once the plea of privilege has been rejected by this Court and the document has seen the light of the day, then, the petitioner would be entitled to challenge the correctness, validity and propriety or otherwise of the said note.

5. On this technical ground, we set aside the order passed by the learned tribunal and remit the matter to the Tribunal with a request to restore the matter back to its original number, give an opportunity to the present petitioner to submit his objections against the said document, provide an opportunity of hearing to the parties and decide the matter afresh in accordance with law without being influenced by the findings earlier recorded by them. The parties shall appear before the Tribunal on 17th April, 2006 for taking further instructions from the Tribunal. Accordingly, the petition stands disposed of. Rule is made absolute to the aforesaid extent. No costs.

***[R.S.Garg, J.]***

***[Sharad D. Dave, J.]***

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